

By: Jackson S.B. No. 1475  
(In the Senate - Filed March 8, 2007; March 20, 2007, read first time and referred to Committee on Government Organization; April 16, 2007, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 16, 2007, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1475 By: Jackson

A BILL TO BE ENTITLED  
AN ACT

relating to the powers and duties of the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.001, Occupations Code, is amended to read as follows:

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means a board, committee, council, or other entity with multiple members that has as its primary function advising the commission or department.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) ~~[(2)]~~ "Department" means the Texas Department of Licensing and Regulation.

(4) ~~[(3)]~~ "License" means a license, certificate, registration, title, or permit issued by the department.

(5) ~~[(4)]~~ "License holder" means a person who holds a license issued by the department.

(6) ~~[(5)]~~ "Respondent" means a person, regardless of whether the person is a license holder, who is charged with violating a law establishing a regulatory program administered by the department or a rule adopted or order issued by the commission or executive director.

(7) ~~[(6)]~~ "Sanction" means an action by the executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, or the placement of a license holder on probation.

SECTION 2. Subsection (a), Section 51.202, Occupations Code, is amended to read as follows:

(a) The commission shall set fees, in amounts reasonable and necessary to cover the costs of administering the programs or activities, for:

(1) licenses issued by the department;

(2) license renewals and late renewals;

(3) examinations; ~~and~~

(4) continuing education; and

(5) any other program or activity administered by the department for which a fee is authorized.

SECTION 3. Subchapter D, Chapter 51, Occupations Code, is amended by adding Sections 51.209, 51.210, and 51.211 to read as follows:

Sec. 51.209. APPOINTMENT OF ADVISORY BOARD MEMBERS.

(a) Except as otherwise provided by law, the presiding officer of the commission, with the commission's approval, shall:

(1) appoint the members of the advisory board; and

(2) appoint a member of the advisory board to serve as presiding officer of the advisory board.

(b) An advisory board member shall serve without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing advisory board functions, subject to the General Appropriations Act.

Sec. 51.210. REMOVAL OF ADVISORY BOARD MEMBER. (a) An advisory board member who was appointed by the presiding officer of the commission with the commission's approval may be removed from the advisory board by the presiding officer of the commission with

the commission's approval on the grounds that the member:

(1) does not have at the time of taking office the qualifications required by the law or rule authorizing appointment of the member;

(2) does not maintain during service on the advisory board the qualifications required by the law or rule authorizing appointment of the member;

(3) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(4) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of an advisory board is not affected by the fact that it is taken when a ground for removal of a member exists.

Sec. 51.211. STATE AGENCY CRIMINAL HISTORY PROCEDURES.

(a) The department may assist other state agencies in developing consistent procedures to obtain and use criminal history record information for licensing, regulatory, and related purposes.

(b) The department may provide funds to other state agencies to assist with developing and implementing the procedures described under Subsection (a).

SECTION 4. Subchapter G, Chapter 51, Occupations Code, is amended by adding Section 51.3511 to read as follows:

Sec. 51.3511. SUBPOENAS. (a) The department may issue a subpoena as provided by this section.

(b) The department may request and, if necessary, compel by subpoena:

(1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter, a law establishing a regulatory program administered by the department, or a rule adopted or order issued by the commission or executive director; and

(2) the attendance of a witness for examination under oath.

(c) A subpoena under this section may be issued throughout the state and may be served by any person designated by the commission or the executive director.

(d) The department, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Venue for an action brought under this section is in a district court in:

(1) Travis County; or

(2) any county in which the department may hold a hearing.

(f) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

SECTION 5. Section 51.353, Occupations Code, is amended to read as follows:

Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

(a) The commission shall revoke, suspend, deny an application for, or refuse to renew a license or shall reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the executive director.

(b) The commission may probate the suspension of a ~~[place on probation a person whose]~~ license ~~[is suspended]~~. If a license suspension is probated, the commission may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

SECTION 6. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.355, 51.356, and 51.357 to read as follows:

Sec. 51.355. CEASE AND DESIST ORDERS. The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

- (1) this chapter;
- (2) a law establishing a regulatory program administered by the department; or
- (3) a rule adopted or order issued by the commission or the executive director.

Sec. 51.356. EMERGENCY ORDERS. (a) If the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, the executive director may issue an emergency order to suspend or revoke a license or to halt operation of an unsafe facility or unsafe equipment that is subject to regulation by the department.

(b) The executive director may issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. The order shall be affirmed to the extent that reasonable cause existed to issue the order.

(d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

(e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Sec. 51.357. DEFERRED ADJUDICATION; LICENSE SUSPENSION, LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE.

(a) The commission may suspend, revoke, deny an application for, or refuse to renew a license if the commission determines that a deferred adjudication makes the person holding or seeking the license unfit for the license.

(b) In making a determination under Subsection (a), the commission shall consider the factors set forth in Sections 53.022 and 53.023 and the guidelines issued by the department under Section 53.025.

SECTION 7. Subchapter H, Chapter 51, Occupations Code, is amended by adding Sections 51.407 and 51.408 to read as follows:

Sec. 51.407. TEMPORARY LICENSE. (a) The commission by rule may provide for the issuance of a temporary license to an applicant who:

- (1) submits to the executive director an application on a form prescribed by the executive director;
- (2) meets preliminary qualifications established by commission rule; and
- (3) pays the required fees.

(b) A temporary license expires on the 21st day after the date of issuance and may not be renewed.

(c) A temporary license holder is subject to:

- (1) this chapter;
- (2) any law applicable to the activity for which the license is required; and
- (3) any rule of the commission or the executive director applicable to the license.

Sec. 51.408. EMERGENCY LICENSE. (a) The executive director may issue an emergency license to a person who meets eligibility requirements provided by:

- (1) a law establishing a regulatory program administered by the department; or
- (2) a rule adopted to implement this section.

4-1           (b) The license expires on the date indicated by the  
4-2 executive director, but not later than the 90th day after the date  
4-3 the license is issued.

4-4           (c) The emergency license holder may engage in the  
4-5 activities authorized by the type of license only:

4-6                 (1) during a time declared as a state of disaster and  
4-7 the following recovery period; and

4-8                 (2) in an area designated as a disaster area under  
4-9 Chapter 418, Government Code.

4-10           SECTION 8. This Act takes effect September 1, 2007.

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